



# MASSACHUSETTS ENDANGERED SPECIES ACT

## REGULATORY CHANGES

Effective July 1, 2005

The Massachusetts Endangered Species Act (MESA; MGL c. 131 A) and its implementing regulations (321 CMR 10.00) establish procedures for the listing and protection of rare plants and animals. As such, MESA plays an important role in maintaining biological diversity, preventing species extinctions, and contributing to rare species recovery in Massachusetts. The MESA regulations were revised to clarify project review filing requirements for projects or activities that are located within a Priority Habitat of Rare Species ("Priority Habitat"), provide clear review timelines, and establish an appeal process for agency actions. These regulatory changes took effect on July 1, 2005 and are linked to the establishment of filing fees to support MESA implementation. The MESA regulatory changes reflect a two-year process of agency consideration with input from the public and key stakeholders. These regulatory changes achieve the goal of providing a clearer, more user-friendly process for project proponents without weakening protections for state-listed rare species and their habitats.

### SUMMARY OF KEY CHANGES

- Applicants must file with NHESP for all Projects or Activities within Priority Habitat of Rare Species (for exemptions see 321 CMR 10.14)
- This filing is required whether or not a Notice of Intent is filed with the local Conservation Commission
- The NHESP must respond following timelines specified in the regulations. Failure to respond in time will result in automatic approval.
- An appeal process for agency decisions is established

### WHO MUST FILE?

Project proponents *must file* directly with the Natural Heritage & Endangered Species Program (NHESP) for *all nonexempt projects or activities where the proposed project is located within a Priority Habitat*. A listing of filing exemptions for projects located within a Priority Habitat is available in the regulations at

#### FILING AN NOI? STREAMLINE YOUR MESA REVIEW!

For a streamlined review of projects located within both an *Estimated Habitat* and a *Priority Habitat*, DEP has an updated NOI form available on their website, located at:

<http://www.mass.gov/dep/water/approvals/wwforms.htm>.

321 CMR 10.14 and is summarized at [www.nhesp.org](http://www.nhesp.org). *The requirement to file under MESA for a project located within a Priority Habitat is independent of the requirement to submit a copy of a required Notice of Intent ("NOI") to the NHESP for a project located within an Estimated Habitat for Rare Wildlife under the MA Wetlands Protection Act Regulations. The revisions to the MESA regulations are not related to Estimated Habitats and have no effect on existing NHESP review procedures under the MA Wetlands Protection Act. A MESA filing is required even if no work is proposed within Wetland Resource Area or Buffer Zone.*

### PROJECT IN PRIORITY HABITAT?

Avoid costly delays, last minute project redesign, and the possibility of criminal and civil penalties by consulting with the NHESP early regarding projects.

(updated 3/23/07)

## HOW DO I FILE?

A filing requirements checklist is provided at [www.nhesp.org](http://www.nhesp.org) (“Regulatory Review” Tab). The fee schedule that supports MESA implementation is provided at 801 CMR 4.00 and at [www.nhesp.org](http://www.nhesp.org).

## WHAT IS PRIORITY HABITAT?

Priority Habitat is the mapped geographical extent of known habitat for all state-listed rare species, both plants and animals. Habitat alteration within Priority Habitats may result in a “take” of a state-listed species, and is subject to regulatory review by the Natural Heritage & Endangered Species Program. Priority Habitat maps are used for determining whether or not a proposed project must be reviewed by the NHESP for MESA compliance. Current Priority Habitat maps are available through an interactive web viewer at [www.mass.gov/dfwele/dfw/nhesp/nhregmap.htm](http://www.mass.gov/dfwele/dfw/nhesp/nhregmap.htm)online. The Priority Habitat datalayer is also available for download and viewing with appropriate software ([www.mass.gov/mgis/prihab.htm](http://www.mass.gov/mgis/prihab.htm)). Maps are also available in the Massachusetts Natural Heritage Atlas (12<sup>th</sup> edition, effective October 1, 2006), which can be ordered by contacting our office.

## WHAT SHOULD I EXPECT DURING THE MESA REVIEW PROCESS?

Within 30 days of receiving a filing the NHESP will provide a response letter indicating whether or not the submission is complete. If the submission is complete, the NHESP will provide a determination letter within 60 days of the date of posting of the first letter. In this letter, the NHESP will determine whether or not a project, as currently proposed, will result in a “take” of state-listed rare species (for more information on “take” see 321 CMR 10.02 and [www.nhesp.org](http://www.nhesp.org)). If a project is determined to result in a take then it may be possible to redesign the project to avoid a take. If such revisions are not possible, then projects resulting in a take may only be permitted if they qualify for a Conservation & Management Permit (321 CMR 10.23). NHESP regulatory review staff is available to consult with project proponents about designing projects to avoid a take or to qualify for a Conservation & Management Permit.

### RECOMMENDATIONS TO REDUCE PROJECT REVIEW DELAYS

- Design projects to avoid a “take.” This will avoid time delays associated with NHESP review of project revisions.
- Submit an Information Request form. The NHESP will respond within 30 days with a list of state-listed species associated with a project site. This may facilitate project planning to avoid and minimize rare species impacts.
- For larger projects, consider a pre-filing consultation with NHESP staff. Although the applicant’s project team should include qualified experts who take the lead in project design to meet MESA standards, the NHESP will offer pre-filing consultations, as time allows.
- Submit a complete permit application. Otherwise the NHESP may be forced to reject the filing, triggering a required resubmission and additional 30-day review period.

## WHERE CAN I GET MORE INFORMATION?

See [www.nhesp.org](http://www.nhesp.org) “Regulatory Review” tab, or contact review staff at (508) 389-6380.

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